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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

GREGORY BENTON MYERS,

Defendant and Appellant.

F067188

(Super. Ct. No. CRM017801)

**OPINION**

**THE COURT\***

APPEAL from a judgment of the Superior Court of Merced County. Ronald W. Hansen, Judge.

Ross Thomas, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Daniel B. Bernstein and Kevin L. Quade, Deputy Attorneys General, for Plaintiff and Respondent.

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\* Before Detjen, Acting P.J., Franson, J., and Chittick, J.†

† Judge of the Fresno Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

## INTRODUCTION

Appellant, Gregory Benton Myers, was charged in an information filed on October 18, 2012, with willfully attempting to deter peace officer, Lieutenant Bimley West, from performing his duties by means of threat or violence (Pen. Code, § 69, count 1) and three counts of making a criminal threat on Lieutenant Bimley and two other officers (Pen. Code, § 422, counts 2, 3, & 4).<sup>1</sup> The information further alleged appellant had a prior serious felony conviction and that the conviction was a serious felony within the meaning of the three strikes law (§§ 667, subd. (a) & 1170.12).<sup>2</sup> A court trial commenced on December 21, 2012. On January 10, 2013, the trial court acquitted appellant of counts 2, 3, and 4. The next day the court found appellant guilty of count 1 and found the allegation of a prior serious felony conviction to be true.

On March 1, 2013, the trial court denied appellant's motion to reduce count 1 to a misdemeanor, but granted appellant's request to have the prior serious felony stricken. The court sentenced appellant to prison for the midterm of two years. The court granted total custody credits of 842 days. Appellant seeks reversal of count 1 contending there was insufficient evidence that he intended his threatening statements to hinder the investigating officer's duties. We disagree and affirm the judgment.

## FACTS

### *Driving Under the Influence Arrest in 2008*

Appellant was pulled over by Merced Police Officer Salvador Mejia on November 6, 2008, for driving under the influence of alcohol. Officer Kennon Sayachak assisted with the investigation. As Mejia was about to arrest appellant and place

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<sup>1</sup> Unless otherwise designated, all statutory references are to the Penal Code.

<sup>2</sup> Proceedings were suspended pursuant to section 1368. Appellant was found incompetent to stand trial and committed to a state hospital. On October 4, 2012, appellant was found competent and proceedings were reinstated.

handcuffs on him, appellant swung around and punched Mejia in the chest. Sayachak deployed his taser, which struck appellant. As Mejia tried to apprehend appellant, Mejia broke the cycling of the taser. Appellant broke free, ran away, and the officers gave chase. When the officers caught appellant, Mejia struck appellant two or three times in the face with his closed fist and he was taken into custody.

### ***Appellant's Threats to Officers***

Appellant filed a complaint of officer mistreatment with Lieutenant Roger McIntyre with the Merced Police Department Internal Affairs Division.

The investigation took several months. Appellant called McIntyre and insisted that Mejia and Sayachak be fired. Each time appellant called, he became more insistent and agitated. McIntyre concluded the complaint was unfounded. Appellant was upset with the finding and wanted McIntyre to reverse it. Appellant told McIntyre he “had ways to take care of the officers” if there was no compliance with his request. Appellant said he would get the FBI involved.

On December 23, 2010, appellant had a conversation with Sergeant Joseph Weiss about his complaint and about being assaulted by Mejia and Sayachak. Appellant talked about his frustration, his military experience, and his infantry skills. Appellant told Weiss he felt that he was going to explode and he was going to make this a big incident to draw attention to his complaint. Appellant talked about getting news coverage from CNN to expose the corruption in the police department.

Appellant told Weiss “it would be a shame if somebody mistook a good officer for one of the bad officers and that somebody might come out of the shadows and do something to one of those officers.” Appellant also made a comment about being good at putting lead on a target. Weiss interpreted this as a possible threat to shoot someone. Appellant was boastful when he made this statement. Weiss took the comments seriously and reported them to others. Weiss found the comments threatening because of the level

of appellant's intensity and that appellant was speaking from the heart. Weiss prepared a memorandum explaining appellant's conduct that he sent to McIntyre. Weiss also prepared a BOL (be-on-the-lookout) advisement warning to all department employees of appellant's threats.

It was about this time that Mejia and Sayachak learned of appellant's threats against them. Officer Frank Bazzar called Sayachak and told him that appellant went to the police station, mentioned Sayachak by name, and said he wanted to put a bullet in Sayachak's head. Sayachak was already aware of the threats appellant conveyed to Weiss. Sayachak was worried about his own safety and his family's safety and moved into a new home. Mejia was also aware of the threats appellant conveyed to Weiss. Mejia was worried about his own safety and his family's safety. In May 2011, Mejia learned of additional threats appellant made to Bazzar about shooting Mejia.

In February 2011, appellant contacted Sean Howard, a public defender. A recording of the conversation was admitted into evidence. Appellant sought the video recording of his arrest and referenced the name of shooter Jared Loughner, who shot and killed several people and shot a Congresswoman.<sup>3</sup> Appellant said Loughner's name, stated that words do not mean anything, and asked whether something explosive needed to happen to get the nation's eyes on Merced.

#### ***May 2011 Telephone Calls***

Lieutenant Bimley West works as an administrator with the Merced Police Department, overseeing the operations division, the sergeants, and taking complaints from citizens. If a complaint warrants further investigation, West refers it to the Internal Affairs Division. If the complaint does not involve a violation of law or department

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<sup>3</sup> Appellant claimed he did not remember who Loughner was.

policy, West handles the complaint himself. West also trains officers. West evaluates citizen complaints and refers to other sources to validate what the citizen has told him.

On May 24 and 25, 2011, West recorded two telephone conversations with appellant. The court heard the recordings. In a long rambling diatribe, appellant complained that he had called the FBI and others and they had “blown off” his complaints. Appellant asserted he had taken an oath to protect this country against enemies both foreign and domestic and it was his patriotic duty to protect it. Appellant noted there was no violence in his record and he had not hurt anyone yet. Appellant explained that weird things happen to him when he gets into scuffles and he leaves people alone.

Appellant told West that was why he was talking to West. Appellant said he also complained to the FBI. Appellant told West that they had to sit down and talk because the issues were multi-layered. Appellant complained about the conduct of the officers during his arrest for being under the influence and claimed the officers were trying to murder him.

Appellant claimed Mejia shot him with a taser after he ran away and that Mejia kicked him in the face. Appellant wanted to bring a lot of explosive situations to Merced’s table and get it on CNN. Appellant said he wanted “to take some dirty cops off the street or to take a dirty DA out of the equation or to f\*cking punish a public defender” who should have defended him but left him out to dry. Appellant said he was a Christian with the restraining spirit of Jesus Christ on him.

Appellant said it would hurt his heart if Mejia and five other officers all had something to do with a little boy or girl getting hurt, or someone who just left the military. Appellant said, “I’d be like, ‘Man, I could have f\*cking took them out before they hurt an American.’” West told appellant he had to go to a meeting soon, but that he was concerned about what appellant was telling him. West told appellant he would call

him the next day. Appellant told West he left the police report with “the ladies in that office” where he had earlier met West. Appellant talked about a conspiracy to have everything buried.

The following day appellant called West and complained at length about a press report. Appellant said the press report blamed him for killing two children. Appellant stated that there “are some more people that deserve f\*cking bullets for denying those [children] justice.” Appellant asserted that he had gone through every proper channel to no avail, and was going to take matters into his own hands. Appellant explained it was “gonna get f\*cking very, very ugly.” Appellant again referred to the failed attempt by the officers to murder him and referred, disjointedly, to another unrelated incident involving a police investigation. Appellant accused another witness of lying.

Appellant was still upset that McIntyre had not given him the video of his arrest in 2008. Appellant complained that McIntyre had shown him what appellant believed to be a “doctored f\*cking thing where the timelines were cut in half.” Appellant complained that the alcohol and toxicology reports from his arrest were lost and called this “some more f\*cking bullsh\*t from Merced.” Appellant said that when “the sh\*t hits the fan and there’s f\*cking bodies on the ground,” people would ask why he did it and why did he use his infantry skills to hurt people.

Appellant complained about being denied justice, and mentioned two other people he believed had been denied justice. Appellant then said that if something was not done, he was going to do something and would lash out for all the people who had been wronged by the police department. West told appellant he needed more time to have another Lieutenant review his case and that he would get back to appellant. Appellant replied that if something was not done, he was “gonna do something.” West pled with appellant to give him more time to look into the matter.

Appellant asked West if West understood appellant's plight. West replied that he understood that appellant felt wronged. Appellant replied that he had been seriously wronged. Appellant explained he had been seriously wronged and complained that cops were supposed to do justice, not perpetrate violence on him. Appellant said, "[t]hose f\*cking piece of sh\*t cops" did not deserve their badges. Appellant asserted he would "be justified in putting a bullet in every f\*cking one of them to protect the people." Appellant said no one advocated for him so he would advocate for himself because we still have our Second Amendment rights. Appellant added that the cops should never forget that.

West reiterated that he was going to take a good look at the case. Appellant replied that West better do so because "it's not over." Appellant said he would embarrass some people, "or some people are gonna get hurt." Again, appellant threatened to put bullets into dirty cops and "taking out f\*cking dirty f\*cking public defenders." Appellant admitted he self-medicated by smoking pot and drinking, but that was it. Appellant said he would fight for what he believed in and his conviction would be for truth.

Appellant again said all those cops deserved a bullet for betraying the public trust and lying in their police reports. When West told appellant that violence was never the answer, appellant asked why violence was perpetrated against him. Appellant named three specific officers, including Mejia, who he believed deserved to be shot with bullets. After a long diatribe, appellant complained that McIntyre had also made himself part of the crime. Appellant warned West that if West found that "[t]here's nothing we can do" then he would say, "[w]ell, there's something I can do. I could protect the public." Appellant also personally threatened West, saying, "you wanna f\*cking not do what you're supposed to do, you can make yourself a part of the crime."

Appellant said he could protect the public. He further said he could cause chaos and that he would not live in fear anymore. Appellant complained about judges, the

Masons, and other conspiracies. Appellant said that hopefully the dirty cops and judges and a multitude of others would be in prison where they belong with their pensions taken away. Appellant reiterated his earlier comments about protecting the public and putting bullets into dirty cops. Appellant referred to himself as a Christian, and said some are warriors, some are preachers, and some are evangelists. Appellant elaborated that: “maybe I’m meant to f\*cking go ahead and bring some pain to these f\*cking Luciferian pedophiles.”

West explained that he took appellant’s calls seriously and was greatly concerned by appellant’s statements. West referred the matter to Officer Bazzar for investigation. Appellant met with Bazzar at the police station. Appellant mentioned his distaste for Mejia and Sayachak and his statement about protecting the United States from foreign and domestic enemies. Appellant told Bazzar it was his patriotic duty to prevent cops from hurting the public. Appellant denied threatening to shoot any officers. Bazzar later arrested appellant.

### ***Defense***

Appellant testified on his own behalf. Appellant had a conviction in 2008 for dissuading a witness (§ 136.1). Appellant admitted he had been arrested on November 6, 2008, for driving under the influence and battery of a police officer. Appellant entered a plea in the 2008 incident to misdemeanors and was placed on probation.

Appellant explained that he had been badgered and provoked into violence by Mejia and Sayachak. Appellant believed he was pushed out of the view of a video camera that was playing from a patrol car during his arrest and that the main action that happened occurred out of the view of the camera. Appellant said the officers were masterful at making it look like appellant triggered the altercation. Appellant’s fight or flight response kicked in. Appellant said the officers caught up to him, knocked him



unconscious, and tased him, placed him in a patrol car, and tased again into unconsciousness. Appellant suffered taser burns on the side of his body.

Appellant reported the misconduct to Lieutenant McIntyre of the Internal Affairs Division and later met with Sergeant Weiss. Appellant admitted that he had interactions with West, but he did not go about things the right way. Appellant's intent was to have an investigation into police misconduct. Appellant asserted his only motivation was to continue the Internal Affairs investigation into his arrest.

Appellant explained he was not in a good place and felt abused by the legal system. Appellant described his words as semantics and emotional blabber. Appellant denied owning firearms or explosives at the time he made his comments.

In its acquittal of appellant on counts 2, 3, and 4, the trial court noted that there was reasonable doubt concerning whether appellant intended his threats to Mejia and Sayachak to be communicated to them and as to a third officer, whether that officer feared for his safety. The court took count 1 under submission overnight.

The trial court ruled that Lieutenant West had administrative responsibilities to oversee the operations of the Merced Police Department, to supervise rotational shifts, and to give direction to officers. When a citizen made a complaint, his duties also included an attempt to resolve the complaint. The court found that Lieutenant West had to be objective to perform these tasks.

The trial court found appellant willfully and unlawfully used threats of violence on May 24 and May 25, 2011 to deter Lieutenant West from performing his duties to be objective in looking into and evaluating the information regarding appellant's allegations of police brutality and the alleged attempts to murder him. The court held that appellant acted through threats of violence with the goal to obtain the final result he sought—the discharge and discipline of Officers Mejia, Sayachak, and the other officers appellant accused of police misconduct. The court found appellant made scary and alarming

statements to compel Lieutenant West into obtaining the result appellant sought and to deter Lieutenant West from being objective.

### **SUFFICIENCY OF THE EVIDENCE**

Appellant contends there was insufficient evidence he violated section 69. Appellant describes his comments to West as chaotic, grandiose, and hyperbolic. Appellant refers to himself as a nonstop talker and argues that his statements did not express a serious intention to inflict bodily harm in order to prevent West from performing his official duties. We disagree.

In assessing a claim of insufficiency of evidence, the reviewing court's task is to review the entire record in the light most favorable to the judgment to determine whether it contains substantial evidence—evidence that is reasonable, credible, and of solid value such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. The standard of review is the same in cases in which the prosecution relies mainly on circumstantial evidence. It is the trier of fact, not the appellate court, which must be convinced of a defendant's guilt beyond a reasonable doubt. If the circumstances reasonably justify the trier of fact's findings, the opinion of the reviewing court that the circumstances might also reasonably be reconciled with a contrary finding does not warrant a reversal of the judgment. (*People v. Rodriguez* (1999) 20 Cal.4th 1, 11; see also *Jackson v. Virginia* (1979) 443 U.S. 307, 317-320 and *People v. Johnson* (1980) 26 Cal.3d 557, 578.)

In reviewing a challenge to the sufficiency of the evidence, appellate courts do not determine the facts. We examine the record as a whole in the light most favorable to the judgment and presume the existence of every fact the trier of fact could reasonably deduce from the evidence in support of the judgment. (*People v. Guerra* (2006) 37 Cal.4th 1067, 1129 [questioned on another ground in *People v. Rundle* (2008) 43 Cal.4th 76]; *People v. Kraft* (2000) 23 Cal.4th 978, 1053.) Unless the testimony of a single

witness is physically impossible or inherently improbable, it is sufficient for a conviction. (Evid. Code, § 411; *People v. Young* (2005) 34 Cal.4th 1149, 1181.)

An appellate court must accept logical inferences that the trier of fact might have drawn from circumstantial evidence. (*People v. Maury* (2003) 30 Cal.4th 342, 396.) Before setting aside the judgment of the trial court for insufficiency of the evidence, it must clearly appear that there was no hypothesis whatever upon which there was substantial evidence to support the verdict. (*People v. Conners* (2008) 168 Cal.App.4th 443, 453; *People v. Sanghera* (2006) 139 Cal.App.4th 1567, 1573.)

Section 69 can be violated two different ways.<sup>4</sup> The first type of violation, relevant here, is the use of threats of violence to attempt to deter or prevent an officer from performing any duty imposed by law. (*In re Manuel G.* (1997) 16 Cal.4th 805, 816.) The term “threat” has been limited to refer to threat of unlawful violence to attempt to deter a peace officer. (*Id.* at pp. 814-815.) The officer who is the object of the threat need not in fact fear the threat will be carried out. The statute only requires that the defendant make the threat with the purpose of inducing fear, and, to thereby deter or prevent the officer from performing any legally imposed duty. (*People v. Hines* (1997) 15 Cal.4th 997, 1061, fn. 15.) The threat can be constitutionally prohibited even when there is no immediate danger of the threat being executed. (*Id.* at p. 1061.) In *People v. Nishi* (2012) 207 Cal.App.4th 954, the court held that the defendant violated Penal Code section 69 by indicating that he would “fire on” any law enforcement officers who patrolled an open space preserve. “Attempts to deter either an officer’s immediate

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<sup>4</sup> Section 69 states in relevant part: “Every person who attempts, by means of any threat or violence, to deter or prevent an executive officer from performing any duty imposed upon such officer by law, or who knowingly resists, by the use of force or violence, such officer, in the performance of his duty, is punishable ....”

performance of a duty or the performance of such a duty at some time in the future constitute a violation of the statute.” (*People v. Nishi, supra*, at p. 967.)

The evidence adduced at trial showed that appellant sought to manipulate West into pursuing appellant’s allegations of misconduct even if West found no merit to the allegations. Appellant made several direct threats to shoot and kill officers in the Merced Police Department and clearly made his threatening comments to West in an obvious attempt to force West to discipline police department officers, regardless of whether West believed such discipline was warranted.

It is true that appellant’s diatribes were rambling and at times hyperbolic. Even so, appellant kept returning to his central threat to personally shoot and kill specific Merced police officers, as well as unnamed public defenders. In doing so, appellant referred to his past infantry experience. The tone of appellant’s language was intense, angry, vulgar, and very violent. West was troubled by appellant’s comments and fearful that he was capable of acting on his threats. Appellant kept demanding that West do something and continue the investigation. In doing so, appellant was conditioning his threats based on the outcome of West’s investigation. We find substantial evidence to support appellant’s conviction of section 69.

### **DISPOSITION**

The judgment is affirmed.